IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

W.P. No. 309 of 2002 (M/B)
(Old No. 30676/1997)

M/s Super Agro Tech Ltd. …… Petitioner

Versus

State of U.P. & others ……. Respondents

Hon. P.C.Verma, A.C.J.
Hon. Rajesh Tandon, J.

Heard Ms. T. Punwani, learned counsel for the petitioner and learned Chief Standing Counsel for the State.

This writ petition has been filed by the petitioner seeking a writ of certiorari to quash the order dated 21.8.97 passed by SDO, Dehradun under sub section 2 of section 167 of the UPZA & LR Act.

The petitioner is a registered company under the provisions of Indian Companies Act, 1956 constituted in the name of Quality Fabricated Limited on 25.6.94. The name of the said Company was changed to Super Agro Tech Limited and a certificate issued under section 23(1) of the Indian Companies Act, 1056 has been annexed as Annexure I to the writ petition. Later on M/s Super Agro Tech Limited having amalgamated in Super Tannery (India) Limited having its registered office at 187/170 Jajmau Road, Jajmau, Kanpur. The Company for establishing 2500 M.T. Processed Capacity Mushroom Project 100% E.O.U. Super Agro Tech Limited at village Atak Form Shelakuri, Dehradun required the land for implementation of the project. The petitioner's Company applied to the District Magistrate, Dehradun as well as Commissioners, Dehradun for permission under section 154(2) of the U.P.Z.A. & L.R. Act for purchasing more than 12.5 acres of land. The Commissioner, Garhwal region, Garhwal by his order dated 27.9.95 accorded permission in favour of the petitioner's company to purchase more than 12.5 acres of land to the extent of 35.16 acres land. The order dated 27.9.95 is annexed as Annexure III to the writ petition. A perusal of this order reveals that permission has been granted by the Commissioner in exercise of power under sub section 2 of section 154 read with Government Order dated 30th May, 1994.

The order sought to be passed has been annexed along with the amendment application shows that the order has been passed under section 167(2). Sub-section 2 of section 167 reads as under:

> "167(2) Where any land or other property has vested in the State Government under sub-section (1), it shall be lawful for the

Collector to take over possession over such land or other property and to direct that any person occupying such land or property be evicted therefrom. For the purposes of taking over such possession or evicting such unauthorized occupants, the Collector may use or cause to be used such force as may be necessary."

The question for consideration is as to whether the transactions of purchase of land by sale deed by the petitioner as per permission granted by the Commissioner, Garhwal Division vide his order dated 27.9.95 is in violation of section 154 of the U.P.Z.A. & L.R. Act or not. The permission granted by the Commissioner dated 27.09.95 has been granted under sub-section 2 of section 154 of U.P.Z.A. & L.R. Act read with Government Order dated 30.05.94. Sub-section 2 of section 154 of the U.P.Z.A. & L.R. Act reads as under:

"154(2) Subject to the provisions of any other law relating to the land tenures for the time being in force, the State Government may, by general or special order, authorise transfer in excess of the limit prescribed in sub-section (1) if it is of the opinion that such transfer is in favour of a registered co-operative society or an institution established for a charitable purpose, which does not have land sufficient for its need or that the transfer is in the interest of general public."

Thus it is clear from the section 154(2) that the permission can be granted only in favour of a co-operative society and in favour of an institution established for the charitable purpose. As stated by the petitioner themselves that the petitioner is a company registered under the Companies Act, 1956 and was willing to establish an industry, the petitioner is neither a co-operative society nor an institution established for the charitable purpose.

Learned counsel for the petitioner submits that vide Government Order dated 30.5.94, it has been clarified by the Government that the permission also can be granted for the establishment of an industry. A strong reliance has been placed on this Government Order contained in Annexure IV and submission is that in view of this Government Order the permission could be granted under sub-section 2 of section 154 by the Commissioner and permission is valid one.

Learned counsel for the petitioner has submitted that the Government Order is within the ambit and scope of sub section 2 of section 154 of the U.P.Z.A. & L.R. Act, 1950. For this argument, the learned counsel for the petitioner has submitted that the word "or" used in between "which does not have sufficient land for its need and that the transfer is in the interest of general public", is disjunctive in nature and after "or" the legislature have

made provision that the transfer in the interest of general public is also can be exempted. The argument of the learned counsel for the petitioner is mis-conceived. “Or” word used is conjunctive in nature. As reading of whole section makes it explicit that when an exemption is granted to the co-operative society or the institution established for charitable purpose, it is also to be seen as to whether it does not have sufficient land for its need and the transfer in favour of the co-operative society or an institution established for the charitable purpose is in the interest of general public. Therefore the Government Order dated 30.05.94 is beyond the ambit and scope of sub-section 2 of section 154 of the U.P.Z.A. & L.R. Act.

It is needless to say that the Government Order cannot over-write the provisions of the Act. Since its vires is not under challenge, therefore, it has got to be read down.

Thus, the permission accorded by the Commissioner was void ab initio being in violation of sub-section 2 of section 154 of the U.P.Z.A. & L.R. Act. Therefore, the transfers made in violation of sub-section 2 of section 154 is void under section 166 of the U.P.Z.A. & L.R. Act.

It is by operation of section 167 of the U.P.Z.A. & L.R. Act that the land in excess of 12.5 of land purchased in violation of section 154(2) of the Act shall vest in the State Government.

Learned counsel for the petitioner has submitted that before passing of the order dated 21.8.97, which is contained in Annexure 10 to the supplementary affidavit by amendment application, no opportunity of hearing was given to the petitioner, only it was published in the newspaper. It was never communicated to the petitioner individually. The argument of the learned counsel for the petitioner is mis-conceived. A perusal of section 167 of the U.P.L.A. & L.R. Act clearly shows that the vesting is by operation of law.

Here, since the vesting is by operation of law, the application of principles of natural justice is impliedly excluded. The order impugned is in accordance with the provisions of section 154, 166 & 167 of the U.P.Z.A. & L.R. Act. The land up to 12.5 acres has been left with the petitioner. Therefore, we hold that the order impugned does not suffer from any infirmity and illegality, which may warrant interference by this court under Article 226 of the Constitution of India.

This writ petition is devoid of merit and is dismissed accordingly. No order as to costs.

(Rajesh Tandon, J.) **(P.C.Verma, A.C.J.)**

Dt. 17.02.2004.

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